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OCT 18 2004

OFFICE OF PETITIONS

In re Application of	:	
Carsten Jensen, et al.	:	
Application No. 10/747,630	:	DECISION ON PETITION
Filed: December 29, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 30120/32005	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 16, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is applicable to those applications filed on or after November 29, 2000 and is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The

relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed August 16, 2004 does not state the relationship of PCTApplication No. PCT/DK02/00459, filed July 2, 2002, to the instant application.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment¹ stating the relationship of the prior-filed applications to the instant application is required.

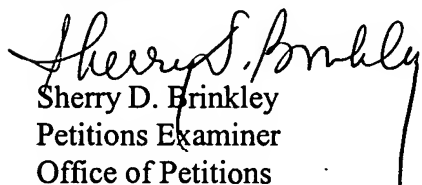
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¹ Note 37 CFR 1.121